

CONTRACT PERIOD THROUGH SEPTEMBER 30, 2010

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **POURING RIGHTS FOOD COURT**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **September 20, 2000**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

SD/~~mas~~ cd
Attach

Copy to: Clerk of the Board
Monica Mendoza, Materials Management
Steve Varscsak, Facilities Management

SPECIFICATIONS ON INVITATION FOR BID FOR:

POURING RIGHTS, FOOD COURT

1.0 **INTENT:**

The Facilities Management Department of Maricopa County is requesting proposals from qualified vendors for pouring rights in association with the downtown Food Court. Under a separate solicitation, Food Court administration will be handled by an independent contractor.

The Food Court concessionaires shall be required to pour the products of the successful proposer.

Due to the newness of this program, the County can only provide estimated data. The Food Court operation will play a vital role in providing for an estimated 7,500 customers each day, generating \$2.3 million annually by year five. The size of the site and the variety of the County's food service needs creates a challenging service environment. The County and the Food Court contractor, Eurest, is committed to providing the highest quality food service program that is capable of offering to the County employees and the public.

The Maricopa County Food Court, with its new name of *Change of Venue Café*, located at 101 W. Jefferson St, Phoenix, Arizona, has contracted concessions for the following national names:

Starbucks Products
Taco Bell
Pizza Hut

The Food Court will also provide convenience store services. Eurest shall provide additional concessions under Eurest Dining Services, which comprises concessions for hot plate foods, cold sandwiches, bakery, salad bar, and refrigerated dispensed and bottled beverages. Hours of operation are to be 7:00 AM to 5:30 PM with possible after hours times and special events to be determined. The site has two separate dining/conference rooms; 1,397 square feet and 349 square feet respectively. These rooms will be available for dining, training, and lectures and can accommodate 90 people comfortably. The larger dining/conference room will include a wet bar and buffet station. Catering will be available for meetings and County agency events.

The main dining area has an occupant load of 450. It is estimated that the facility will have its construction completed during the month of September 2000. It is possible that the complicated nature of remodeling a food court may extend this date slightly.

2.0 **TECHNICAL SPECIFICATIONS:**

- 2.1 This award shall be made to the responsible proposer whose proposal is determined to be the most advantageous to the County based on the evaluation factors set forth in this RFP. Price, although a consideration, will not be the sole determining factor.
- 2.2 If any proposer submits information that they consider to be proprietary, the proposer must place it in a separate envelope and marked "Proprietary Information". If the procurement officer concurs, this information will not be considered public information. The procurement officer is the final authority as to the extent of material which is considered proprietary or confidential. Pricing information cannot be considered proprietary.
- 2.3 Any person, firm, corporation, or association submitting a proposal shall be deemed to have read and understood all the terms, conditions, and requirements in this RFP.
- 2.4 The County offers pouring rights for beverages as defined below in association with this RFP.
 - (A) Carbonated Soft Drinks: All refrigerated carbonated flavored drinks.
 - (B) Non-Carbonated Soft Drinks: All refrigerated non-carbonated flavored drinks to include tea and coffee based drinks.
 - (C) Sports Drinks: Non-carbonated refrigerated drinks intended to replenish nutrients lost through heavy exertion or sports.

- (D) Juice: Non-carbonated refrigerated drinks containing at least seventy percent (70%) natural juice by volume.
- (E) Water Non-carbonated bottled drinking water.
- 2.5 During the term of the RFP, the proposer must remain competitive in terms of pricing to ensure fairness to the County. **It is expected that all products will be supplied at the Eurest Dining Services, national contract price, for both Fountain and Vending product.**
- 2.6 These pouring rights will include all services in food service operations and all concessions in the downtown food court.
- 2.7 Payment for these pouring rights will be made on an annual basis. Each annual payment will be due July 1 of each contract year.
- 2.8 Proposers should list and describe the beverage related equipment to be placed in the food service locations, and proposers are invited to propose how they will upgrade this equipment over the ten year course of the agreement so that food service customers benefit from state-of-the-art beverage equipment. **Proposers are to contact Nancy Hill, Eurest District General Manager at (602) 272-9457 for details relating to the floor plan that was handed out at the pre-proposal (i.e. number of fountain heads, number and size of coolers etc.).**
- 2.9 Proposer shall be responsible for all distribution systems for bulk products and liquid carbon dioxide.
- 2.10 Proposer shall provide a dedicated service technician to the County throughout the term of the agreement.
- 2.11 Proposer shall identify other financial and non-financial benefits that could accrue to the County relative to the service areas included within this RFP.
- 2.12 Proposer shall not require the food court management company to use non-recyclable cups.
- 2.13 As the contract matures, the County may add other sites. The proposer will be notified and pricing adjusted accordingly.
- 2.14 Vending Machines:
Vending machines shall not be part of this RFP as the State of Arizona, Department of Economic Security has contracted with its own vendors to provide such equipment.
Current vending equipment in the East, Central and West Courts Building are 11-12 oz. Can dispensers and 4 combo units.
- 2.15 Required submittals:
- 2.15.1 Evidence that the proposer has been engaged for at least the past three (3) years in providing services as listed in this RFP.
- 2.15.2 Pricing Attachment A
- 2.15.3 Independent evidence of the quality, brand name recognition, and Phoenix market share of the products poured.
- 2.15.4 A description of the products to be poured.
- 2.15.5 A list and description of beverage related equipment that will be provided for each food service location, and any proposal to upgrade this equipment during the course of the ten (10) year agreement that could result from this solicitation.
- 2.15.6 Any other information that you feel will assist the County in evaluating your proposal. This information could include, but not limited to, any proposed support services, paper products, marketing and advertising, and /or other forms of compensation.

3.0 **SPECIAL TERMS & CONDITIONS:**

3.1 CONTRACT LENGTH:

This Invitation For Bids is for awarding a firm, fixed REVENUE contract to cover a TEN (10) year period.

3.2 OPTION TO EXTEND:

The County may, at their option and with the approval of the Contractor, extend the period of this Contract up to a maximum of TWO (2), FIVE (5) year options. The Contractor shall be notified in writing by the Materials Management Department of the County's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period.

3.3 INDEMNIFICATION AND INSURANCE

3.3.1 INDEMNIFICATION

To the fullest extent permitted by law, the **CONTRACTOR** shall defend, indemnify, and hold harmless the **COUNTY**, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, omissions or mistakes relating to the performance of this Contract. **CONTRACTOR'S** duty to defend, indemnify and hold harmless the **COUNTY**, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes, the **CONTRACTOR** may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

Abrogation of Arizona Revised Statutes Section 34-226:

In the event that A.R.S. § 34-226 shall be repealed or held unconstitutional or otherwise invalid by a court of competent jurisdiction, then to the fullest extent permitted by law, the **CONTRACTOR** shall defend, indemnify and hold harmless the **COUNTY**, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or resulting from **CONTRACTOR'S** work or services. **CONTRACTOR'S** duty to defend, indemnify and hold harmless, the **COUNTY**, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any act or omission of the **CONTRACTOR**, anyone **CONTRACTOR** directly or indirectly employs or anyone for whose acts **CONTRACTOR** may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the **COUNTY**.

The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of the **COUNTY**.

3.4 INSURANCE REQUIREMENTS

CONTRACTOR, at **CONTRACTOR'S** own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to the **COUNTY**.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the **COUNTY**, constitute a material breach of this Contract.

The **CONTRACTOR'S** insurance shall be primary insurance as respects the **COUNTY**, and any insurance or self-insurance maintained by the **COUNTY** shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the **COUNTY**.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the **COUNTY** under such policies. The **CONTRACTOR** shall be solely responsible for the deductible and/or self-insured retention and the **COUNTY**, at its option, may require the **CONTRACTOR** to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The **COUNTY** reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The **COUNTY** shall not be obligated, however, to review such policies and/or endorsements or to advise **CONTRACTOR** of any deficiencies in such policies and endorsements, and such receipt shall not relieve **CONTRACTOR** from, or be deemed a waiver of the **COUNTY'S** right to insist on strict fulfillment of **CONTRACTOR'S** obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name the **COUNTY**, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against the **COUNTY**, its agents, representatives, officers, directors, officials and employees for any claims arising out of **CONTRACTOR'S** work or service.

3.4.1 Commercial General Liability. **CONTRACTOR** shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for **CONTRACTOR'S** operations and products and completed operations.

If the **CONTRACTOR** subcontracts any part of the work, services or operations awarded to the **CONTRACTOR**, he shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the **CONTRACTOR'S** work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the **CONTRACTOR'S** Commercial General Liability insurance.

3.4.2 Automobile Liability. **CONTRACTOR** shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to **CONTRACTOR'S** vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.

3.4.3 Workers' Compensation. The **CONTRACTOR** shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of **CONTRACTOR'S** employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, the **CONTRACTOR** will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the **CONTRACTOR**.

3.5 CERTIFICATES OF INSURANCE

Prior to commencing work or services under this Contract, **CONTRACTOR** shall furnish the **COUNTY** with Certificates of Insurance, or formal endorsements as required by the Contract, issued by **CONTRACTOR'S** insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the **CONTRACTOR'S** work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the **COUNTY** fifteen (15) days prior to the expiration date.

3.6 CANCELLATION AND EXPIRATION NOTICE:

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the **COUNTY**.

3.7 USAGE REPORT:

The Contractor shall furnish the County a quarterly usage report delineating the acquisition activity governed by the Contract. The format of the report shall be approved by the County and shall disclose the quantity and dollar value of each contract item by individual unit.

3.8 TECHNICAL AND DESCRIPTIVE LITERATURE:

Bidder(s) must include complete manufacturer's technical and descriptive literature regarding the material they propose to provide. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the bid being rejected.

3.9 INQUIRIES:

All inquiries concerning information contained herein shall be addressed to:

MARICOPA COUNTY
DEPARTMENT OF MATERIALS MANAGEMENT
ATTN: CONTRACT ADMINISTRATION
320 WEST LINCOLN
PHOENIX AZ 85003

Administrative telephone inquiries shall be addressed to:

STEVE DAHLE, SENIOR PROCUREMENT SPECIALIST – (602) 506-3450

Technical Telephone inquiries shall be addressed to:

STEVE VARASCK, FMD (602) 506-8198

Inquiries may be submitted by telephone but must be followed up in writing. No oral communication is binding on Maricopa County.

3.10 PRE-BID CONFERENCE:

THERE WILL BE A MANDATORY PRE-BID CONFERENCE ON AUGUST 3, 2000 AT 10 AM AT THE MARICOPA COUNTY MATERIALS MANAGEMENT DEPARTMENT, 320 W. LINCOLN ST., PHOENIX, AZ 85003

4.0 **CONTRACT TERMS AND CONDITIONS:**

4.1 LANGUAGE FOR REQUIREMENTS CONTRACTS:

Contractors signify their understanding and agreement by signing this document, that the Contract resulting from this bid will be a requirements contract. However, this Contract does not guarantee that any purchases will be made.

It only indicates that if purchases are made for the services contained in this Contract, that they will be purchased from the Contractor awarded that item. Orders will only be placed when a need is identified by a Using Agency or Department and proper authorization and documentation have been approved.

4.2 UNCONDITIONAL TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

4.3 TERMINATION FOR DEFAULT:

If the Contractor fails to meet deadlines, or fails to provide the agreed upon service/material altogether, a termination for default will be issued. The termination for default will be issued only after it is deemed by the County, that the Contractor has failed to remedy the problem after being forewarned.

4.4 TERMINATION BY THE COUNTY:

If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate this Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of, a substantial violation of any provision of this Contract, then the County may

terminate this Contract. Prior to termination of this Contract, the County shall give the Contractor fifteen (15) calendar days written notice. Upon receipt of such termination notice, the Contractor shall be allowed fifteen (15) calendar days to cure such deficiencies.

4.5 ORGANIZATION - EMPLOYMENT DISCLAIMER:

The Contract is not intended to constitute, create, give rise to or otherwise recognize a joint venture contract or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the Contract.

The parties agree that no persons supplied by the Contractor(s) in the performance of obligations under the contract are considered to be County employees, and that no rights of County civil service, retirement or personnel rules accrue to such persons. The Contractor(s) shall have total responsibility for all salaries, wages, bonuses, retirement withholdings, workmen's compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the County harmless with respect thereto.

4.6 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S. § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the contract.

4.7 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete services to this Contract. Should a service requirement be deleted, payment to the Contractor will be reduced proportionally, to the amount of service reduced in accordance with the bid price. Should additional services be required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.8 SUBCONTRACTING:

The Contractor may not assign this Contract or Subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job project.

4.9 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.10 CONFORMATION WITH THE LAW:

This service shall be accomplished in conformity with the laws, ordinances, rules, regulations and zoning restrictions of the United States of America, the State of Arizona, County of Maricopa, and the City of Phoenix.

4.11 CONTRACT COMPLIANCE MONITORING:

The Materials Management Department and the using Agency (ies) shall monitor the Contractors compliance with, and performance under, the terms and conditions of the Contract. The Contractor shall make available for inspection and/or copying by the County all records and accounts relating to the work performed or the services provided in this Contract.

4.12 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The Department, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of any and all said materials.

4.13 ADEQUACY OF RECORDS:

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided. The Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.14 AUDIT DISALLOWANCES:

If at any time it is determined by the Department that a cost for which payment has been made is a disallowed cost, the Department shall notify the Contractor in writing of the disallowance and the required course of action, which shall be at the option of the Department either to adjust any future claim submitted by the Contractor by the amount of the disallowance or to require repayment of the disallowed amount by the Contractor forthwith issuing a check payable to Maricopa County.

4.15 VALIDITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.16 CONTRACTOR RESPONSIBILITY:

The Contractor will be responsible for any damages whatsoever to County property as applicable when such property is the responsibility or in the custody of the Contractor, his employees or Subcontractors.

4.17 DELIVERY:

It shall be the Contractor responsibility to meet the County's delivery requirements, as called for in the Technical Specifications. Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

4.18 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.19 SECURITY AND PRIVACY:

The Contractor agrees that none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. The County shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

The Contractor shall incorporate the foregoing provisions of this paragraph in all of its authorized subcontracts.

PEPSI COLA COMPANY, 4242 E RAYMOND ST, PHOENIX, AZ, 85040

PRICING SHEET

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: X YES NO

INTERNET ORDERING CAPABILITY: YES X NO

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: YES X NO

6.0 PRICING-REVENUE

In consideration for the pouring rights for carbonated soft drinks, non-carbonated soft drinks, sports drinks, juice, and bottled water offered in this solicitation, the proposer will make the following payments to the County at the start of each year:

		REVENUE PER YEAR
6.1	Year 1	<u>\$13,000</u>
6.2	Year 2	<u>\$13,000 + Growth</u>
6.3	Year 3	<u>\$13,000 + Growth</u>
6.4	Year 4	<u>\$13,000 + Growth</u>
6.5	Year 5	<u>\$13,000 + Growth</u>
6.6	Year 6	<u>\$13,000 + Growth</u>
6.7	Year 7	<u>\$13,000 + Growth</u>
6.8	Year 8	<u>\$13,000 + Growth</u>
6.9	Year 9	<u>\$13,000 + Growth</u>
6.10	Year 10	<u>\$13,000 + Growth</u>

VENDING OPTION:

6.11 20 OZ. PRODUCT

6.11.1 WATER	<u>\$ 8.80</u>
6.11.2 NON-CARBONATED	<u>\$13.75</u>
6.11.3 CARBONATED	<u>\$13.75 + Growth</u>
6.11.4 JUICE	<u>\$ 8.10</u>

6.12 VENDING 12 OZ.

6.12.1 CARBONATED	<u>\$ 6.60</u>
6.12.2 NON-CARBONATED	<u>\$ N/A</u>

Terms: Revenue Contract

Vendor Number: ~~131584303~~ **134042452 A**

Federal Tax ID Number: 13-4042452

Company Web Site: www.pepsi.com

Telephone Number: (602) 437-7009

Fax Number: (602) 437-7077

Company Contact (REP): Jeri Roberts

E-mail Address (REP): jeri.roberts@pepsi.com

Contract Period: To cover the period ending September 30, 2010.